

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THOMAS DUANE STRAWDER, )

Petitioner, )

4:16CV3160

V. )

SCOTT R. FRAKES, Director, NEB )  
DEPT CORR SERVICES, and )  
STATE OF NEBRASKA, )

Respondents. )

**MEMORANDUM AND ORDER**

This matter is before the court on Petitioner's Motion to Appoint Counsel (Filing No. [28](#)). "[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court." [McCall v. Benson](#), 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g.,* [Morris v. Dormire](#), 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); [Hoggard v. Purkett](#), 29 F.3d 469, 471 (8th Cir. 1994). *See also* Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time.

Petitioner has also filed an "Ex Parte Motion to Determine Subject Matter Jurisdiction" (Filing No. [29](#)) and another miscellaneous motion. (Filing No. [30](#).) Petitioner is advised that the next step in his case is for the court to conduct an initial review of his claims. The court will conduct this review in its normal course of business. Therefore, these motions will likewise be denied without prejudice to

reassertion.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion to Appoint Counsel (Filing No. [28](#)) is denied without prejudice to reassertion.
2. Petitioner's Ex Parte Motion to Determine Subject Matter Jurisdiction (Filing No. [29](#)) is denied without prejudice to reassertion.
3. Petitioner's miscellaneous motion (Filing No. [30](#)) is denied without prejudice to reassertion.

DATED this 19<sup>th</sup> day of December, 2016.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge